

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS' COMPENSATION APPEALS PANEL
AT NASHVILLE

November 26, 2007 Session

AEROSPACE TESTING ALLIANCE v. FARRIS D. ANDERSON

**Direct Appeal from the Chancery Court of Coffee County
No. 06-283 L. Craig Johnson, Judge**

**No. M2007-00959-WC-R3-WC - Mailed - March 19, 2008
Filed - May 23, 2008**

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) (2005) for hearing and reporting to the Supreme Court of findings of facts and conclusions of law. The trial court found that the employee had suffered a 65 percent vocational impairment to the body as a whole resulting from gradual hearing loss and tinnitus and also found that the employee's last day worked was his date of injury. The trial court awarded 260 weeks of permanent partial disability benefits. The employer has appealed, contending that the employee failed to prove causation of his tinnitus and that he is therefore entitled to recover only for his hearing loss, an injury to a scheduled member. The employer also asserts that the date of injury should be an earlier date, the last date on which the employee was exposed to high levels of noise injurious to his hearing. We hold that the trial court was correct in setting the employee's date of injury as the last day on which the employee worked for the employer. Based on the proof in the record, we hold that the trial court did not err in ruling that the employee suffered a "whole body" impairment. The judgment below is affirmed.

**Tenn. Code Ann. § 50-6-225(e) (Supp. 2007) Appeal as of Right; Judgment of
the Trial Court Affirmed**

JERRY SCOTT, SR.J., delivered the opinion of the court, in which WILLIAM C. KOCH, JR., J., and ALLEN W. WALLACE, SR. J., joined.

Fredrick R. Baker, Cookeville, Tennessee, for the appellant, Aerospace Testing Alliance.

Robert G. Norred, Jr., Chattanooga, Tennessee, for the appellee, Farris D. Anderson.

OPINION

FACTS AND PROCEDURAL BACKGROUND

The employee, Farris D. Anderson was 54 years old at the time of trial. He graduated from high school in 1970 and he obtained his certificate as an industrial journeyman electrician from the Tennessee State Area Vocational Technical School at McMinnville in 1972. After completing his training, Mr. Anderson worked for various employers as an electrician. He began working for Aerospace Testing Alliance (ATA) at Arnold Engineering Development Center (AEDC), operated by the United States Air Force at Arnold Air Force Base, in late 1979 as a journeyman electrician. He worked there for one year, left to work for another company, and returned to ATA in 1983. From 1983 until 1987, Mr. Anderson worked in the power control area of ATA's operations where he was exposed to high levels of noise on a daily basis. He described the noise as a "real high-pitched level type of noise you can't communicate with your fellow workers." "It's a high frequency sound from the wind tunnels that they use to test aircraft engines."

In 1987, Mr. Anderson left power control and went to work in ATA's "model shop" "where they prepare the models for the testing, and they also fabricate on the duct work, the large duct work that the air flows through to do the testing." He was also exposed to high levels of noise on a daily basis in the model shop.

In April 1995, Mr. Anderson was attempting to repair an overhead crane at one of the buildings occupied by ATA. He was using a new electric meter, which was faulty. When he placed the leads of the meter on the crane's electrical circuit, an explosion occurred. He suffered mild burns to his face and one hand "[a]nd the noise from the blast left a ringing damage to my - - you know, damaged my hearing somewhat." Mr. Anderson testified that "after the explosion [he] noticed a change in [his] hearing" and explained that "[i]t got worse but it actually, it got to be - gradually had gotten worse over a period of time."

Subsequent to his work in the model shop, Mr. Anderson's primary responsibility became "big engine repair," where he worked on "large wind tunnel motors" while they were running. The operation of those engines caused "high-pitched" noise at such a volume that communication between employees was very difficult. He stated that, in order to communicate with one another, he and his fellow

workers would “just have to yell and scream . . . at the top of [their] voice.” (sic)

In 2004, Mr. Anderson’s job changed to power switchboard operator. That change was the result of a promotion and was not caused by his hearing difficulties. That position required Mr. Anderson to “monitor all the switch yards [through which] the power came in to the base.” He explained that there were eleven or twelve different yards. If he discovered a high voltage switch that needed maintenance or that a facility needed a “voltage outage,” it was his responsibility to handle those needs. Again, that job exposed him to noise “almost on a daily basis” although the remainder of his work in that position was monitoring equipment in a control room where the noise levels were lower.

Mr. Anderson first discussed his hearing issues with upper level management of ATA on December 13, 2005. According to Mr. Anderson at that meeting:

[T]hey called me in that morning and informed me that they were going to have to send me home because of, my hearing had gotten so severe that they were afraid I was going to lose all my hearing, and that they didn’t have a job at the time that they could put me on.

Nevertheless, Mr. Anderson continued to report to work where he “sat in the control room and waited daily for a job assignment.” On July 12, 2006, he again met with upper management personnel. They told him that they were unable to place him in a position in which the noise levels were under 80 decibels and so they were sending him home “on medical leave.” He never returned to work after that meeting.

As to his hearing loss, Mr. Anderson testified that he has a “very difficult time” understanding conversation when there is background noise. He relies on lip reading to some extent. He has trouble comprehending words if two people are speaking to him simultaneously. He testified that he obtained hearing aids in 2004 in order to “hear [his] grandchildren.” Because they caused him to develop ear infections, however, he is able to wear them only four to six hours a day.

Mr. Anderson testified that he had suffered from tinnitus¹ since the 1995

¹Tinnitus is “[a] sensation of noise (such as ringing or roaring) in the ear. Tinnitus may be audible or inaudible. Audible tinnitus is usually associated with a muscular tic or vascular bruit. Inaudible tinnitus can be heard only by the person affected and may be associated with an obstruction of the external auditory canal or a disturbance of the auditory nerve and/or the central

explosion. He said:

It's gotten more irritable and more noise level, and seemly it bothers me through the night. I wake up with – it's more noticeable to me of a night when I wake up, and just every day it's just a constant, continuous thing. There is occasions that it's even worse, but it's an every-day event.

Since his discharge from ATA, Mr. Anderson has assisted Ryan Kelly Anderson, one of his sons in the son's electrical contracting business and with his son's rental property. He described his services as “an overseer” and “handyman-type work.” His work in this regard was occasional and was “[n]ot very well” paid. He testified that he did not think he could perform these services for anyone other than his son because of his hearing loss and the safety risks that the work presented.

Charlestine Anderson, the employee's wife, testified about her husband's hearing difficulties. She stated that he had trouble understanding what his grandchildren said; he had to turn the television volume “almost as high as it will go” in order to hear it; he cannot hear the alarm clock go off; and she cannot converse with him unless they are facing one another and he can see her lips.

Mr. Anderson's son, Ryan Kelley Anderson, also testified about his father's hearing difficulties. He explained that he could not communicate with his father on the telephone and has to use a “high tone of voice” in order to speak with him, which causes people to think that he is ill at his father by the way he has to speak to him. Mr. Anderson also explained that doing electrical work with his father presented dangers because if there was a miscommunication about which circuit to disconnect, it could “cost [him his] life.”

Dr. William Wray, a professional disability consultant, testified that, based on his interview and testing of Mr. Anderson and his review of Mr. Anderson's medical records, Mr. Anderson “had lost reasonable access to approximately 86 percent of those jobs to which he had reasonable access prior to developing the hearing problems and the tinnitus.” On cross-examination, Dr. Wray acknowledged that, in assessing Mr. Anderson's job market access, he “looked at skilled employment based on [Mr. Anderson's] training.”

nervous system.” American Medical Association Guides to the Evaluation of Permanent Impairment 603 (Linda Cocchiarella & Gunnar B. J. Anderson eds., 5th ed. 2000).

Dr. Richard Bryan Bell, a board certified otolaryngologist, i.e., an ear nose and throat specialist (ENT), testified by deposition. An audiogram was performed on Mr. Anderson in his office in October 1993. At that time, Mr. Anderson had “near normal hearing in low frequencies,” but he had “considerable high-tone sensorineural hearing loss in both ears, worse in the left ear.” Mr. Anderson had 80 percent speech discrimination in the right ear and 78 percent in the left ear at that time.² Dr. Bell next saw Mr. Anderson in May 1995 after he had suffered the electrical explosion at work. Mr. Anderson “complained of severe ringing in both ears since the accident” and told Dr. Bell that it sounded like his head was “in a barrel.” Dr. Bell conducted another audiogram which indicated that Mr. Anderson had suffered additional loss of hearing “in the lower frequencies.” Dr. Bell testified that, “[a]s a result of that accident, [he] felt that [Mr. Anderson’s] audiogram showed a mid tone and high tone nerve loss for his hearing.” Dr. Bell “computed his amount of hearing loss at that time as 26 percent for both ears.”

Dr. Bell next saw Mr. Anderson in August 2006, after upper management had placed him “on medical leave.” He complained of increased hearing loss in both ears. He denied having any pain in his ears but had “a chirping, squeaking noise in both ears” that was “slightly worse in the right ear.” He complained about “tinnitus in both ears that caused him to waken from sleep.” According to Dr. Bell, Mr. Anderson did not indicate that the tinnitus had gotten worse since 1995. Dr. Bell performed another audiogram. That audiogram showed a “considerable” additional loss in the low, mid, and high tones. Dr. Bell testified that Mr. Anderson’s hearing “had gotten considerably worse following the injury.” Dr. Bell explained that “most of his hearing loss was caused by working in a noisy environment and especially the episode of where the device exploded.” Dr. Bell also testified that his “measurements at that time held that [Mr. Anderson’s] binaural hearing impairment was 55.61 percent.” As to Mr. Anderson’s tinnitus, Dr. Bell described it as “moderately severe” and assigned an additional 5 percent impairment on that basis. Combining the two impairments led to a whole body anatomical impairment of 21 percent.

As to Mr. Anderson’s speech discrimination abilities, Dr. Bell stated that “[h]is right ear discrimination was 8 percent, and his left ear discrimination score was 24 percent.” The ideal score for speech discrimination tests is 100 percent. Thus, Mr.

²Dr. Bell explained that speech discrimination refers to a person’s ability to distinguish between “different vowels and consonants” thereby enabling a listener to differentiate between similar words like “cat, rat, bat and fat.”

Anderson's speech discrimination abilities were "very poor." According to Dr. Bell, low speech discrimination scores indicate that a person will have "a great deal of difficulty" understanding human speech, even when it is loud. The difficulty increases when there is background noise. Dr. Bell also stated that there was no "realistic hope" that Mr. Anderson's hearing would improve over time.

On cross-examination, Dr. Bell explained that the testing indicated that Mr. Anderson's hearing loss was in his inner ears or in the cochlea. With respect to his hearing aids, Dr. Bell testified that "it would be impossible for him to wear them fruitfully at work because they would only amplify the noise that already bothered him anyway. . . . [H]e couldn't function at all at work with two hearing aids [a]ccording to . . . his job description, what he did." Dr. Bell continued: "There are certain ideal situations where he might function with a hearing aid that gave him some help. But [there] would have to be very low or nonexistent background noise."

The medical records made an exhibit to Dr. Bell's deposition include the results of an audio examination done in August 1979 by ATA when Mr. Anderson was a "new hire." That examination includes a "hearing history" which indicates that Mr. Anderson had not previously experienced ringing in his ears or "exposure to loud noises other than gunfire." The history also indicates that Mr. Anderson had no prior ear injury.

No medical or lay proof was presented by the employer.

Upon considering the foregoing, the trial court ruled that Mr. Anderson had suffered a gradually occurring injury; that, under the last day worked rule, July 12, 2006, was the date of Mr. Anderson's injury, resulting in a workers' compensation rate of \$682 per week; that Mr. Anderson had suffered a 65 percent vocational impairment to the body as a whole; and awarded him 260 weeks of permanent partial disability benefits.

The employer has appealed, contending that (1) Mr. Anderson is entitled to recover only for his hearing loss, a scheduled member injury; and (2) the trial court should have placed the date of injury as of December 15, 2005, the "last day [Mr. Anderson] worked in an environment in which he was exposed to noise." We agree with the trial court, that Mr. Anderson is entitled to recover in this action for his hearing loss and his tinnitus. We also agree with the trial court that Mr. Anderson's date of injury was July 12, 2006, and we conclude that Mr. Anderson is entitled to permanent partial disability benefits for a 65 percent vocational impairment for loss

of hearing in both ears and tinnitus.

STANDARD OF REVIEW

We review issues of fact de novo upon the record of the trial court accompanied by a presumption of correctness of the findings, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2005). When credibility and weight to be given testimony are involved, considerable deference is given the trial judge when he or she had the opportunity to observe the witness' demeanor and to hear in-court testimony. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315, 315 (Tenn. 1987). This Court, however, may draw its own conclusions about the weight and credibility to be given to expert testimony when all of the expert proof is by deposition. Krick v. City of Lawrenceburg, 945 S.W.2d 709, 712 (Tenn. 1997); Landers v. Fireman's Fund Ins. Co., 775 S.W.2d 355, 356 (Tenn. 1989). A trial court's conclusions of law are reviewed de novo upon the record with no presumption of correctness. Ridings v. Ralph M. Parsons Co., 914 S.W.2d 79, 80 (Tenn. 1996).

ANALYSIS

I. Tinnitus

ATA argues that Mr. Anderson's award should be reduced from a 65 percent vocational impairment to the body as a whole, which includes a component for its employee's tinnitus, to a 55.61 percent impairment to a scheduled member, i.e., his ears. ATA contends that Mr. Anderson failed to prove his tinnitus is a gradually occurring injury caused by his work at ATA.

The existence of a causal relationship between an employee's employment and the injury must be established by the preponderance of the expert opinions supplemented by the lay evidence. The proof of the causal connection may not be largely speculative, conjectural, or uncertain. Clark v. Nashville Mach. Elevator Co., 129 S.W.3d 42, 47 (Tenn. 2004); Simpson v. H.D. Lee Co., 793 S.W.2d 929, 931 (Tenn. 1990); Tindall v. Waring Park Ass'n, 725 S.W.2d 935, 937 (Tenn. 1987). Absolute certainty with respect to causation is not required, however, and the Court must recognize that, in many cases, expert opinions in this area contain an element of uncertainty and speculation. Fritts v. Safety Nat'l Cas. Corp., 163 S.W.3d 673, 678 (Tenn. 2005).

We disagree with ATA that Mr. Anderson failed to prove a causal connection between his tinnitus and his work. He testified that the explosion he suffered while working on a crane “left a ringing damage to . . . [his] hearing.” Shortly after the explosion, Mr. Anderson complained to Dr. Bell about “severe ringing in both ears.” Mr. Anderson testified that, as of the date of trial, he continued to suffer from tinnitus. His employment records from 1979, when he first began work for ATA, indicate that, prior to beginning his work with ATA, he had not previously experienced tinnitus. Dr. Bell testified that there were no objective tests to determine the onset or worsening of tinnitus.

We find that the proof clearly establishes that Mr. Anderson’s tinnitus was initially caused by the explosion he suffered while working at his job in 1995. This worker’s compensation claim is not based upon that 1995 event. Rather, the counter complaint simply states that he “was employed by [ATA] through July of 2006 when he was discharged. [He] sustained a gradual hearing loss, tinnitus and accompanying injuries to his body in the course and scope of his employment with [ATA].” We construe this language as alleging that, like his gradual hearing loss, Mr. Anderson suffered gradually worsening tinnitus.

A gradually occurring injury is one which results from “gradual or cumulative events or trauma.” Tenn. Code Ann. § 50-6-201(b) (2005). A gradually occurring injury typically commences at some unknown point and then gradually progresses in severity until it causes disability. That is, the employee suffers a gradual worsening in his or her condition over time until disability occurs. In contrast, an acute injury, such as a broken bone, causes disability upon its onset. Carpal tunnel syndrome, for instance, is generally a gradually occurring injury. See, e.g., Turner v. HomeCrest Corp., 226 S.W.3d 273, 279 (Tenn. 2007). Mr. Anderson’s hearing loss was a gradually occurring injury.

The record sufficiently demonstrates that Mr. Anderson’s tinnitus worsened over time so as to constitute a gradually occurring injury within the context of our workers’ compensation statutes. Mr. Anderson testified that his tinnitus had grown “worse” since its onset, and Dr. Bell testified that there is no objective test to determine the onset or exacerbation of tinnitus.

The American Medical Association Guides to the Evaluation of Permanent Impairment (Linda Cocchiarella & Gunnar B. J. Anderson eds., 5th ed. 2000), also known as the AMA Guides, is the so-called Bible on the subject of the evaluation of physical impairment. Indeed, Tennessee Code Annotated section 50-6-204(d)(1)(B)

provides that no anatomical impairment or impairment rating, whether contained in a medical record, medical report, depositions, or oral expert opinion testimony shall be accepted during a benefit review conference or be admissible as evidence at a workers compensation trial unless the impairment is based on the applicable edition of the AMA Guides, except in cases not covered by the AMA Guides. Tennessee Code Annotated section 50-6-102(2) provides that the AMA Guides in effect on the date the employee is injured is the edition applicable to the claim. The fifth edition was promulgated in November 2000. On the last day Ms. Anderson worked in 2006 the fifth edition of the AMA Guides was clearly the proper reference on the topic of evaluation of impairment.

Paragraph 11.2 of the AMA Guides, 5th edition, page 246, provides that “[a]lthough hearing and balance disturbances can be objectively measured, other conditions, such as chronic otorrhea, otalgia, and tinnitus, are subjective, should be noted, but cannot be measured independently of the individual’s self-reports.” Id. at 246.

Paragraph 11.2a of the AMA Guides, 5th edition, page 246 sets forth the criteria for rating impairment due to hearing loss and begins as follows:

Criteria for evaluating hearing impairment are established through hearing threshold testing, which serves as the most reproducible of the measures of hearing. Therefore, estimate an impairment percentage based on the severity of the hearing loss, which accounts for changes in the ability to perform activities of daily living. Tinnitus in the presence of unilateral or bilateral hearing impairment may impair speech discrimination. Therefore, add up to 5% for tinnitus in the presence of measurable hearing loss if the tinnitus impacts the ability to perform activities of daily living.

Id. (Emphasis in the original). The AMA Guides imply that the presence of tinnitus, whether or not it was caused by a condition in the workplace will increase the percentage of disability “if the tinnitus impacts the ability to perform activities of daily living.”

Dr. Bell and the AMA Guides agree that the diagnosis of tinnitus is entirely subjective as its presence or absence cannot be measured. The evaluating physician must decide whether the patient is truthful in his description of the noise in his ears. Dr. Bell clearly testified that he believed Mr. Anderson experiences tinnitus as he

described his condition to him, and the trial court clearly believed Mr. Anderson's testimony regarding his tinnitus and its impact on his ability to perform the activities of daily living.

Mr. Anderson testified that his tinnitus has gotten worse since 1995 because the noise has "gotten more irritable and more noise level," "it's more noticeable to me of a night when I wake up and just every day it's just a constant, continuous thing," and "[t]here is (sic) occasions that it's even worse, but it's an everyday event." He said it seems worse when it is quiet and the coldness of the air seems to make it worse. Finally, he has problems differentiating between two speakers and has difficulty comprehending speech, with voices running together. He testified that understanding speech is a major problem for him, making it unsafe for him and others when he was working with voltage as high as 161,000. His tinnitus clearly impacts his "ability to perform activities of daily living," i.e., differentiation and comprehension of words spoken by other people.

An employee in a workers' compensation suit "has the burden of proving his or her case 'in all its parts' by a preponderance of the evidence." Owens Ill., Inc. v. Lane, 576 S.W.2d 348, 350 (Tenn. 1978). We hold that even though that there is no objective evidence of Mr. Anderson's tinnitus, Mr. Anderson has carried his burden of proving that his tinnitus is a gradually occurring injury for which he is entitled to recover benefits in this action. We therefore affirm the trial court's ruling on this issue³ and hold that Mr. Anderson is entitled to recover for his hearing loss and his tinnitus.⁴

II. Date of Injury

³The trial court's inclusion of Mr. Anderson's tinnitus is significant because it converted his injury from a scheduled member, his hearing in both ears, to an injury to the body as a whole. See Tenn. Code Ann. § 50-6-207(3)(A)(r) (2005); Johnson v. Pasmenco Zinc, Inc., No. M2005-02309-WC-R3-CV, 2007 WL 789522, at *5-6 (Tenn. Workers' Comp. Panel Mar. 16, 2007).

⁴ Given the fact that the presence of tinnitus in an individual is entirely subjective and cannot be objectively measured, the finding of its presence by a preponderance of the evidence depends on just one factor, i.e., whether the trial judge found the witness credible. Here, the judge found Mr. Anderson credible.

ATA concedes that, when considering gradually occurring injuries, the “last day worked” serves to set the date of an employee’s injury. See Building Materials Corp. v. Britt, 211 S.W.3d 706, 713 (Tenn. 2007) (applying last day worked rule for purposes of applying the statute of limitations).⁵ However, ATA argues that, in this case, we should modify the last day worked rule to the “last day worked in harmful environment” rule, implicitly analogizing to the “last injurious exposure” rule. See Mahoney v. Nationsbank of Tenn., N.A., 158 S.W.3d 340, 345-46 (Tenn. 2005), overruled on other grounds, Britt, 211 S.W.3d at 713. Thus, ATA contends that the date of Mr. Anderson’s injury was December 15, 2005, rather than July 12, 2006, because Mr. Anderson was no longer exposed to excessive noise levels after December 2005.

The last injurious exposure or last injurious injury rule was crafted in order to determine which employer among successive employers should be liable for an employee’s gradually occurring injury. See id. Such a rule is necessary because our workers’ compensation law provides for “no apportionment of liability between a prior employer and the last employer.” Id. at 346. Thus, the rule provides that, where an employee suffers a gradually occurring injury while working for employer A and then goes to work for employer B, employer B will be liable for the injury only to the extent that the subsequent employment results in a progression or aggravation of the injury. Id. The rule recognizes the link between causation and liability central to our workers’ compensation statutes. See Tenn. Code Ann. § 50-6-102(13) (2005).

ATA argues that Mr. Anderson was not exposed to excessive noise levels after December 2005 and that no additional hearing loss occurred thereafter. Accordingly, ATA contends, we should consider Mr. Anderson’s post-December 2005 employment irrelevant for the purposes of determining his date of injury. ATA makes that contention because Mr. Anderson’s wages were lower in December 2005 than they were in July 2006. Thus, ATA is simply attempting to reduce the amount of its workers’ compensation liability to Mr. Anderson.

We are not persuaded. This case is bereft of the reason underlying the last injurious injury rule, to wit: the inability to apportion liability between two or more employers of an employee suffering from a gradually occurring injury. Mr. Anderson

⁵A previous panel recently determined that Britt is to be applied retroactively. See Mathenia v. Milan Seating Sys., No. W2006-01215-SC-WCM-WC, 2007 WL 3026360, at *5 n.5 (Tenn. Workers’ Comp. Panel Oct. 17, 2007).

did not leave ATA's employ until July 2006, at which time ATA's management sent him home under the claim that it had no position available which would accommodate the hearing loss Mr. Anderson had suffered while doing his job. That Mr. Anderson may not have suffered additional injury during the interim is, in this context, irrelevant. Significantly, the Tennessee Supreme Court has recently reiterated its commitment to a bright-line "last day worked" rule for purposes of determining an employee's date of injury. See Britt, 211 S.W.3d at 713 (overruling Bone v. Saturn Corp., 148 S.W.3d 69, 71 (Tenn. 2004)), which held that "the last day worked rule does not apply when determining an employee's compensation rate if the employee has given the employer actual notice of a gradually occurring injury prior to missing time from work on account of the injury." It is proper to apply the last day worked rule in this case where there was no change in employers and where, in spite of his gradually occurring injury, Mr. Anderson continued to work for ATA until ATA terminated him because of his hearing problems. We affirm the trial court's holding on that issue.

CONCLUSION

Mr. Anderson is entitled to recover workers' compensation benefits for his binaural hearing loss and his tinnitus. His date of injury was July 12, 2006. He is entitled to the award of permanent partial disability benefits as found by the trial court. The judgment is affirmed. Costs of this appeal are taxed to the appellant, Aerospace Testing Alliance, and its surety, for which execution may issue, if necessary.

JERRY SCOTT, SENIOR JUDGE

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

AEROSPACE TESTING ALLIANCE v. FARRIS D. ANDERSON

**Chancery Court for Coffee County
No. 06-283**

No. M2007-00959-SC-WCM-WC - Filed - May 23, 2008

JUDGMENT ORDER

This case is before the Court upon the motion for review filed by Aerospace Testing Alliance pursuant to Tennessee Code Annotated section 50-6-225(e)(5)(B), the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law.

It appears to the Court that the motion for review is not well-taken and is therefore denied. The Panel's findings of fact and conclusions of law, which are incorporated by reference, are adopted and affirmed. The decision of the Panel is made the judgment of the Court.

Costs are assessed to Aerospace Testing Alliance, and its surety, for which execution may issue if necessary.

It is so ORDERED.

PER CURIAM

William C. Koch, Jr., J., not participating